Supreme Court, U.S.
FILED

OCT 12 2009

OFFICE OF THE CLERK
William K. Suter, Clerk

NO _____

IN THE
SUPREME COURT OF THE UNITED
STATES

CHAYADIPURNAMA CIPTANAGARA, ET AL
PETITIONERS,

VS.

ERIC H. HOLDER, JR., US ATTORNEY
GENERAL – RESPONDENT.

ON PETITION FOR A WRIT OF
CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

CINDY S. CHANG, ESQ.
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ATTORNEY FOR PETITIONERS

THE QUESTIONS PRESENTED FOR REVIEW

1 Whether the incidents happened to the Petitioners in Indonesia. on account of their Chinese ethnicity and Christian belief. rise to the level of past persecution?

2. Whether the Petitioners are members of "disfavored group" in Indonesia. and therefore, they are eligible for relief in the form of withholding of removal?

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record for Petitioner, in compliance with Rule 14(b) and rule 29.6 of the Rules of the Supreme Court of the United States, certifies the following listed person and parties have an interest in the outcome of this case:

1. Eric H. Holder, Jr., U.S. Attorney General, Respondent
2. Deitz P. Lefort, Attorney for Respondent
3. Anthony C. Payne, Attorney for Respondent
4. The Board of Immigration Appeals
5. William A. Cassidy, Immigration Judge
6. Cindy S. Chang, Attorney for Petitioner
7. Chayadipurnama Ciptanagara, Petitioner
8. Susan Rahardja, Petitioner

TABLE OF CONTENTS

STATEMENT OF JURISDICTION --- 1

CONSTITUTIONAL ROVISIONS, STATUTES, AND REGULATIONS ---------- 1

STATEMENT OF THE CASE ---------- 1

ARGUMENT ---------- 3

1. Petitioners' Petition for Panel Rehearing should have been granted because they are eligible for relief in the form of withholding of removal on the basis that they have suffered past persecution in Indonesia on account of their Chinese ethnicity and Christian religion ---------- 3

2. Petitioners' Petition for Panel Rehearing should have been granted because they are members of "disfavored group" in Indonesia, therefore, they are eligible for the relief in the form of withholding of removal ---------- 4

CONCLUSION ---------- 6

INDEX TO APPENDICES ---------- 7

TABLE OF AUTHORITIES

Cases	Page
Arteaga v. INS, 836 F.2d 1227, 1236 (9th Cir. 1988)	3
Hartooni v. INS, 21 F.3d 336, 341 (9th Cir. 1994)	5
Hoxha v. Ashcroft, 319 F.3d at 1181, 1184 (9th Cir. 2003)	5
Kovac v. INS, 407 F.2d 102, 107 (9th Cir. 1969)	4
Sael v. Ashcroft, 386 F.3d 922 (9th Cir. 2005)	4
Sangha v. INS, 103 F.36 1482, 1487 (9th Cir. 1997)	3
Singh v. INS, 94 F.3d at 1353-1358 (9th Cir. 1996)	3
Singh v. INS, 94 F.3d at 1360-61	4
Shirazi-Parsa v. INS, 14 F.3d 1424, 1428 (9th Cir. 1994)	3
Wakarry v. Holder, 588 F.3d 1049 (9th Cir. 2009)	2, 5

Statues & Regulations	
8 U.S.C. Sections 208.13(b)(1)(i)	1, 4

STATEMENT OF JURISDICTION

On August 21, 2009, the US Court of Appeals for the Eleventh Circuit denied the Petitioners' petition for panel rehearing This Court's jurisdiction to grant the review on a writ of certiorari is discretional. The judicial discretion is warranted here because there are legal questions of exceptional importance involved in this case.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

1. 8 C.F R. Section 208.13(b)(1)(i)

STATEMENT OF THE CASE

This is an immigration case. The petitioners, Chayadipurnama Ciptanagara and Susan Rahardja ("Petitioners"), are husband and wife. They are natives and citizens of Indonesia with Chinese ethnicity and Christian belief. Petitioners petition for a writ of certiorari on the decision rendered by the US Court of Appeals for the Eleventh Circuit on August 21, 2009.

Petitioners were admitted to the United States on October 9, 2001 as nonimmigrant visitors with authorization to remain until April 8, 2002. Petitioners overstayed their visas and were placed in removal proceedings.

As Chinese Christian Indonesians, Petitioners had suffered persecution in Indonesia on account of their ethnicity and religion. They applied for relief from removal to Indonesia in the form of asylum, withholding of removal under Immigration and Nationality Act and under the Convention against Torture

On May 27, 2007, the Immigration Judge ("IJ") issued an oral decision denying petitioners' application for asylum and withholding of removal. Petitioners through their former counsel, appealed to the Board of Immigration Appeals ("BIA").

On September 4, 2008, BIA affirmed IJ's decision and dismissed their appeal.

Through counsel, Petitioners filed a timely Petition for Review to the US Court of Appeals for the Eleventh Circuit Court

The Eleventh Circuit Court denied that petition on May 29, 2009.

In march 2009; the US Court of Appeals for the Ninth Circuit issued a decision to extend the "disfavored group" approach to the withholding of removal cases in Wakkary v. Holder, 558 F.3d 1049. As Chinese Christians, Petitioners filed a Petition for Panel Rehearing with the hope that the Court would reconsider its decision based on the ruling in Wakkary, supra. Unfortunately that petition was denied on August 21, 2009.

ARGUMENT

A. Petitioners' Petition for Panel Rehearing should have been granted because they are eligible for relief in the form of withholding of removal on the basis that they have suffered past persecution in Indonesia on account of their Chinese ethnicity and Christian religion.

In Singh v. INS, 94 F.3d 1353, 1358 (9th Cir. 1996), the Court found "Persecution may be found by cumulative, specific instance of violence and harassment toward an individual and her family members not only by the government, but also by a group the government declines to control." (Citing Shirazi-Parsa v. INS, 14 F.3d 1424, 1428 (9th Cir. 1994)) The 9th Circuit Court in Singh also found "Discrimination, harassment, and violence by groups the government is unwilling or unable to control can also constitute persecution." Id. at 1539 (citing Arteaga v. INS, 836 F.2d 1227, 1231 (9th Cir. 1988)) Furthermore, the Court in Sangha v. INS, 103 F.3d 1482, 1487 (9th Cir. 1997) found "A single isolated incident may not "rise to the level of persecution, [but] the cumulative effect of several incidents may constitute persecution.

In this case, Petitioners were repeatedly harassed, discriminated, and attacked by the native Indonesians. Petitioners suffered violent attacks targeted at them just because they are Chinese Christians. Cumulatively, the experiences suffered by Petitioners in their home country compel the conclusion that they had suffered past persecution

Further, the suffering inflicted on Petitioners because they are Chinese Christians were not simply a "minor disadvantage or trivial inconvenience." See Kovac v. INS, 407 F.2d 102, 107 (9th Cir. 1969). It amounted to "the infliction of suffering or harm upon one who suffers in race, religion, or political opinion in a way regarded as offensive." Accordingly, Petitioners are entitled to a regulatory presumption that they have a well-founded fear of future persecution because they established they suffered past persecution. See Singh v. INS, 94 F.3d at 1360-61. Also, 8 C.F.R. S 208.13(b)(1)(i) states: "A finding of past persecution triggers a regulatory presumption that the applicant has a well-founded fear of future persecution, which provisionally established the applicant's refugee status and eligibility for asylum."

However, because of the one-year filing deadline, Petitioners are barred from the relief in the form of asylum; nonetheless, Petitioners are eligible for the relief in the form of withholding of removal based on the fact that they are members of the "disfavored group" in Indonesia and there is a clear probability that they will suffer future harm if returned to Indonesia.

B. Petitioners' Petition for Panel Rehearing should have been granted because they are members of "disfavored group" in Indonesia; therefore, they are eligible for the relief in the form of withholding of removal.

In Sael v. Ashcroft, 386 F.3d 922 (9th Cir. 2005), the Ninth Circuit Court held that: "Given Indonesia's history of anti-Chinese violence and

official discrimination. we hold that Sael's evidence compels the conclusion that Indonesia's ethnic Chinese minority is at least a disfavored group" The Court further held that: "certain individuals with [Sael's] characteristics-Christian of Chinese ethnicity-could have a well-founded fear of persecution in Indonesia."

The past experiences petitioners had suffered with anti-Chinese threats and violence support a "specific inference of personal danger." See Hartooni v. INS, 21 F.3d 336, 341 (9th Cir. 1994); also, in Hoxha v. Ashcroft, 319 F.3d 1181, 1184 (9th Cir 2003), the Court held that the petitioner demonstrated a "particularized risk" of persecution on account of his Albanian ethnicity with evidence that he was harassed and threatened, attacked on one occasion by a group of anti-Albanian Serbs."

As in Hartooni and Hoxha, Petitioners' past experiences establish a sufficient personal connection to the general persecution directed against ethnicity Chinese in Indonesia. Therefore, Petitioners are eligible for the relief in the form of asylum, if they had filed the asylum application within one year after they arrived in the United, because they have a well-founded fear of returning to Indonesia on account of their Chinese ethnicity and Christian religion.

There is no dispute that the Petitioners are Christians of Chinese ethnicity. As Chinese Christians, Petitioners are members of the "disfavored group". In Wakkary, supra, the US Court of Appeals for the Ninth Circuit extended

its "disfavored group" approach to the withholding of removal case. Since Petitioners belong to the "disfavored group", and they had suffered past persecution in Indonesia, there is a clear probability that they will suffer future harm if returned to Indonesia. Therefore, Petitioners' request for relief in the form of withholding of removal should have been granted.

CONCLUSION

Based on the foregoing reasons, Petitioners respectfully request this Petition for a Writ of Certiorari be granted.

Dated: November 12, 2009

Respectfully Submitted,

By: /S/

Cindy S. Chang, Esq.
Attorney for Petitioners

INDEX OF APPENDICES

APPENDIX A - Mandate of the Eleventh Circuit Court, Issued on August 31, 2009

APPENDIX B - Order of the Eleventh Circuit Court, Issued on August 21, 2009

APPENDIX C - Order of the Eleventh Circuit Court, Issued on May 29, 209

APPENDIX D - Decision of the BIA, Dated September 4, 2008

APPENDIX E - Order of the Immigration Judge

APPENDIX F - Oral Decision of the Immigration Judge

United States Court of Appeals
For the Eleventh Circuit

FILED
U.S. COURT OF APPEALS ELEVENTH CIRCUIT
May 29,2009
THOMAS K KAHN
CLERK

No. 08-15388
Agency Nos. A095-246-717, A95-247-446

CHAYADIPURNAMA CIPTANAGARA,
SUSAN RAHARDJA,

Petitioners,

versus

U.S ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the Board of Immigration Appeals

APPENDIX A

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: May 29,2009

For the Court: Thomas K. Kahn, Clerk

By Clark, Djuanna

ISSUED AS MANDATE

AUG 31 2009

U.S. COURT OF APPEALS

ATLANTA, GA

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 08-15388-BB

FILED
U.S. COURT OF APPEALS ELEVENTH CIRCUIT
AUG 21,2009
THOMAS K. KAHN
CLERK

CHAYADIPURNAMA CIPTANAGAR,
SUSAN RAHARDJA,

Petitioners,

versus

U.S. ATTORNEY GENERAL, Respondent.

Petition for Review of a Decision of the Board of Immigration Appeals

ON PETITION (S) FOR REHEARING AND PETITION (S) FOR REHEARING EN BANC

Before: BLACK, MARCUS and ANDERSON, Circuit Judges.

APPENDIX B

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

_____

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 08-15388
Non-Argument Calendar

FILED
U S COURT OF APPEALS ELEVENTH CIRCUIT
MAY 29.2009
THOMAS K. KAHN
CLERK

Agency Nos A095-246-717 A095-247-446

CHA Y ADIPURNAMA CIPTANAGARA,
SUSAN RAHARDJA,

Petitioners,

versus

U.S. ATTORNEY GENERAL, Respondent.

Petition for Review of a Decision of the Board of Immigration Appeals

(May 29, 2009)

Before BLACK, MARCUS and ANDERSON, Circuit Judges

APPENDIX C

PER CURIAM:

Chayadipurnama Ciptanagara and his wife, Susan Rahardja, natives and citizens of Indonesia, seek review of the Board of Immigration Appeals' (BIA's) decision affirming the Immigration Judge's (IJ's) denial of their applications for withholding of removal[1]. They assert the IJ and BIA erred in denying their applications for withholding of removal because they suffered past persecution in Indonesia on account of their Chinese ethnicity and Christian religion. Further, they contend their testimony describing past threats, intimidation, and damage to his business, along with country reports, demonstrated a clear probability of future persecution in Indonesia.

We review only the BIA's decision when the BIA issues a separate decision, "except to the extent that it expressly adopts the IJ's opinion." *Al Najjar v. Ashcroft*, 257 F.3d 1262, 1284 (11th Cir. 2001). "Insofar as the [BIA] adopts the IJ's reasoning, we will review the IJ's decision as well." *Id.* Because the BIA issued its own decision but adopted the IJ's reasoning with respect to Ciptanagara's and Rahardja's withholding of removal claims, we review both decisions.

---

[1] On appeal, Ciptanagara and Rahardja concede they did not file timely asylum applications and do not meet the requirements for the exceptions to the one-year filing deadline. *See* 8 U.S.C. § 1158(a)(2)(D). Thus, they do not appeal the denial of their asylum applications.

Further Ciptanagara and Rahardja do not challenge the denial of relief under the United Nations Convention Against Torture and Other Cruel Inhumane or Degrading Treatment or Punishment (CAT) 8 C F R § 208 16(c) Accordingly they have abandoned the claim by failing to raise it in their brief *See Sepulveda v U S Att'y Gen* 401 F 3d 1226 1228 n 2 (11th Cir 2005)

We review the BIA's legal conclusions *de novo*, and the BIA's and IJ's factual findings under the substantial evidence test. *Forgue v. U.S. Att'y Gen.*, *401* F.3d 1282, 1286 (11th Cir. 2005); *Adefemi v. Ashcroft*, 386 F 3d 1022, 1026-27 (11th Cir 2004) (en banc); *Mohammed v. Ashcroft*, 261 F.3d 1244, 1247 (11th Cir. 2001). Under the substantial evidence test, we "affirm the .. decision if it is 'supported by reasonable, substantial, and probative evidence on the record considered as a whole.'" *At Najjar*, 257 F.3d at 1283-84 (citation omitted). The substantial evidence test is "deferential" and does not allow "re-weigh[ing] the evidence from scratch." *Mazariegos v. U.S Att'y Gen.*, 241 F.3d 1320, 1323 (11 th Cir. 2001). "To reverse ... fact findings, we must find that the record not only supports reversal, but compels it." *Mendoza*, 327 F.3d 1283, 1287 (11th Cir. 2003) "[T]he mere fact that the record may support a contrary conclusion is not enough to justify a reversal of the administrative findings " *Adefemi*, 386 F.3d at 1027.

To obtain withholding of removal, an alien must establish that his "life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S C. § 1231(b)(3)(A). "The alien bears the burden of demonstrating that it is 'more likely than not' [he]

BEST AVAILABLE COPY

will be persecuted or tortured upon being returned to [his] country." *Tan v. U.S. Att'y Gen.*, 446 F.3d 1369, 1375 (11th Cir. 2006) (quoting *Sepulveda*, 401 F.3d at 1232). "[P]ersecution is an extreme concept requiring more than a few isolated incidents of verbal harassment or intimidation ... [m]ere harassment is not persecution." *Ruiz v. Gonzales*, 479 F.3d 762, 766 (11th Cir. 2007) (quotations omitted). Withholding of removal protects against persecution by government forces and non-governmental groups that the government cannot control. *Sanchez v. U.S. Att'y Gen.*, 392 F.3d 434,437 (11th Cir. 2004). However, general civil strife does not create eligibility for relief, even if the applicant's life is clearly threatened, unless the applicant proves the relationship between his fear of harm and a statutorily enumerated ground. *Perlera-Escobar v. Executive Office for Immigration*, 894 F.2d 1292, 1297-99 (11th Cir. 1990). The standard for withholding of removal "is more stringent than the 'well-founded fear of future persecution' required for asylum." *Tan*, 446 F.3d at 1375.

An alien may satisfy his burden of proof for withholding of removal in two ways. First, an alien may establish past persecution based on a protected ground. *Id.* Past persecution creates a rebuttable presumption that he has a well-founded fear of future persecution and shifts the burden to the Department of Homeland Security to show changed conditions in the country or the ability to avoid a future threat through relocation. *Id.* Second, an alien may establish that it is more likely than not that he would be persecuted upon removal due to race, religion, or nationality. *Id.* "'An alien cannot demonstrate that [he] more-likely-than-not would be persecuted on a

protected ground if the [BIA] finds that the alien could avoid a future threat by relocating to another part of [his] country.'" *Id.* (quoting *Mendoza*, 327 F.3d at 1287). Evidence that an alien's family continues to reside unharmed in a country supports a conclusion that a threat may be avoided by relocation. *Ruiz* v. *U.S. Att'y Gen.*, 440 F.3d 1247,1259 (11th Cir. 2006).

Substantial evidence supports the IJ's and BIA's decision affirming the denial of Ciptanagara's and Rahardja's applications for withholding of removal. First, although Ciptanagara and Rahardja briefly mention on appeal that they suffered past persecution and generally argue the IJ erred in finding they were not eligible for withholding of removal, they do not challenge the IJ's finding the incidents described by them did not constitute past persecution. By not offering an argument on this issue, Ciptanagara and Rahardja have waived it on appeal. *See Greenbriar, Ltd.* v. *City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (holding a passing reference to an issue in a brief is insufficient to properly raise that issue). Even assuming Ciptanagara and Rahardja properly preserved this issue, the incidents described by them, including damage to the furniture store in 1998, robberies, harassment, and police intimidation, do not compel a finding that they suffered past persecution. *Compare Ruiz*, 479 F.3d at 766 (holding beatings, kidnaping, and threatening phone calls constituted persecution) and *Perlera-Escobar*, 894 F.2d at 1297-99 (requiring examination of the motivation of groups threatening an alien in the context of civil wars where general conditions of violence exist).

Second, substantial evidence supports the IJ's

conclusion that Ciptanagara and Rahardja did not establish they would more likely than not suffer future persecution on account of their ethnicity or religion. Ciptanagara testified that after the May 1998 riots he traveled to Singapore, but did not seek protection from the government in Singapore and even returned to Indonesia. He did not come to the United States until April 1999, almost one year after the riots. The evidence also supports the IJ's finding Ciptanagara likely came to the United States as an economic refugee, because he started working within one month of his arrival and did not apply for asylum until almost four years after his arrival

Likewise, the record does not compel reversal of the BIA's determination that, if a threat of persecution existed at all, Ciptanagara and Rahardja failed to demonstrate the threat was throughout Indonesia. The 2006 Country Report and 2002 Immigration Report both acknowledged that conditions for ethnic Chinese have continued to improve since 1998. The 2002 Immigration Report indicated that ethnic Chinese had not been targeted in eastern Indonesia. Also, the 2006 Country Report indicated that Catholicism was an officially recognized religion in Indonesia. Additionally, Ciptanagara's and Rahardja's families continue to reside in Indonesia, and the last reported incident occurred in 2002.

Accordingly, we deny Ciptanagara's and Rahardja's petition with respect to their withholding of removal claims.

PETITION DENIED.

U S Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals
Falls Church, Virginia 22041

Files: A095 246 717 - Atlanta, GA
A095 247446

Date: SEP - 4 2008

In re: CHAYADI PURNAMA CIPTANAGARA
SUSAN RAHARDJA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Warren Y. Wen, Esquire

ON BEHALF OF DHS: Randall Duncan
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

ORDER:

PER CURIAM. The respondents, natives and citizens of Indonesia, have appealed the decision of the Immigration Judge dated May 25,2007, denying their applications for asylum and withholding of removal under sections 208 and 24 I (b)(3) of the

Immigration and Nationality Act, and protection under the United Nations Convention Against Torture (CAT)[1]. The appeal is dismissed.

The respondents are barred by statute from asylum because their application was untimely filed and they have not demonstrated that such late filing was legally excused. Sections 208(a)(2)(B) and (D) of the Immigration and Nationality Act; 8 C.F.R. §§1208.4(a)(2), (4) and (5). The respondents failed to establish by clear and convincing evidence that their asylum application was filed within one year of the date of their arrival in the United States, or within a reasonable period after the expiration of their authorized stay. *See* 8 C.F.R. § 1208.4(a)(2)(i)(A). The respondents failed to establish the existence of extraordinary circumstances or changed circumstances for their failure to meet the one-year deadline (I.J. at 2). *See* section 208(a)(2)(D) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a)(2)(D).

The respondents, who are ethnic Chinese and Christian, testified concerning incidents which occurred in 1998. We agree with the Immigration Judge's determination that the incidents experienced by the respondents in the past did not rise to the level of persecution, nor have the respondents demonstrated a "clear probability" of future persecution to merit

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[1] As the asylum application was filed on March 10, 2003, it is not subject to the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231.

withholding of removal. We further find that if the threat of persecution to the respondents exists at all, they have failed to demonstrate that it exists for them country-wide. *See Matter of A-E-M-*, 21 I&N Dec. 1157 (BIA 1998); *Matter of C-A-L-*, 21 I&N Dec. 754, 759 (BIA 1997).

Finally, the record does not establish that anyone in governmental authority has any current interest in the respondents. The respondents failed to demonstrate that they are more likely than not to be tortured by, or with the acquiescence of, anyone within governmental authority. 8 C.F.R. §§ 1208.16 and 1208.18; *see Forgue v. U.S. Atty. Gen.*, 401 F.3d 1282, 1288 (11th Cir. 2005).

Accordingly, the appeal is dismissed.[2]

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondents are permitted to voluntarily depart from the United States, without expense to the Government, within 30 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security (DHS). *See* section 240B(b) of the Immigration and Nationality Act; 8 U.S.C. § 1229c(b); *see also* 8 C.F.R. §§ 1240.26(c), (f). In the event the respondents fail to voluntarily

---

[2] In view of the above, we find it unnecessary to address whether the Immigration Judge properly found the respondents lacking in credibility.

depart the United States, the respondents shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondents fail to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondents shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of10 years for any further relief under section 240B and sections 240A, 245,248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

IMMIGRATION COURT
77 FORSYTH STREET, ROOM 112
ATLANTA, GA 30303

Case No.: A95-246-717

In the Matter of
CIPTANAGARA, CHAYADIPURNAMA , Respondent

IN REMOVAL PROCEEDINGS.

ORDER OF THE IIMMIGRATION JUDGE

This is a summary of the oral decision entered on 5/25/07
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to or in the alternative to

[ ] Respondent application for voluntary departure was denied and respondent was ordered removed to
Or in the alternative to

[x] Respondent application for voluntary departure was granted until 6/25/2007 upon posting a bond in the amount of $ 2,000.00 with an alternate order of removal to Indonesia

Respondent's application for:

[ ] Asylum was ( ) granted ( ) denied ( ) withdrawn

[ ] Witholding of removal was ( ) granted ( ) denied ( ) withdrawn

APPENDIX E

[ ] A waiver under section _____ was ( ) granted ( ) denied ( ) withdrawn

[ ] Cancellation under section 240A (a) was ( ) granted ( ) denied ( ) withdrawn

Respondent's application for:

[ ] Cancellation under section 240A (b) (1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order

[ ] Cancellation under section 240A (b) (2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of status under section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application of (x) withholding of removal ( ) deferral of removal under article III of the Convention Against Torture was ( ) granted (x) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under Section 246.

[ ] Respondent is admitted to the United States as A _____ until _____

[ ] As a condition of admission, respondent is to Post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration judge's oral decision.

[ ] Proceedings were terminated.

[X] Other: ___ ___ _ _ ___ ___ ___ _____ _____

Date: 5/25/2007

_____
WILLIAM A. CASSIDY
Immigration Judge

Appeal: ~~Waived~~ / Reserved Appeal due by: 6/25/2007

U S DEPARTMENT OF JUSTICE EXECUTIVE
OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Atlanta, Georgia

File A 95 246 717
File A 95 247 446

In the Matter of

CHAYADIPURNAMA CIPTANAGARA,
SUSAN RAHADJA,

Respondent

IN REMOVAL PROCEEDINGS

CHARGE:

APPLICATIONS: Asylum, withholding, and deportation treatment under the UN Torture Convention.

ON BEHALF OF RESPONDENT:
Mr. Wang, Esquire

ON BEHALF OF DHS:
Ms. Hernandez, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondents are not natives or citizens of the United States, but natives and citizens of

Indonesia, who entered the United States at or near Los Angeles, California International Airport, on or about April 27, 1999, as B-2 visitors with authorization to remain until April 25, 2001. They remained in the United States beyond that authorization. Thereafter, the respondent filed a request for asylum. That was received March 10, 2003.

That matter was thereafter referred to Immigration Court and a Notice to Appear was issued charging the respondents with removability under 237(a)(1)(B) as overstay. At a master calendar hearing, respondent through counsel admitted the factual allegations contained in the Notice to Appear and conceded removability. Based upon those admissions, the Court finds removability has been established by clear, convincing, and unequivocal evidence.

The respondents initially had requested the protection of the United States of asylum. However, they have failed to meet the one-year requirement necessary for the filing of such an application. The respondent indicated he did not know, however, during the course of his testimony, the respondent indicated that upon his arrival in 1999, both he and his wife, which was confirmed by her testimony, that they both sought to remain in the United States permanently. They, for reasons unknown to the Court, were able to extend that visit for a year and half by filing two applications for extensions. They did not file the application for asylum in almost two years thereafter. The Court does not find that the respondents have met the standard to excuse their late filing and will consider this matter under withholding of removal.

The respondents can claim that they fear

persecution and torture, upon a return to their home country, based upon their ethnic identity as ethnic Chinese. Also, the respondents fear that they would be persecuted because they're Christians The grant of asylum, unlike withholding of removal, is discretionary. This well-founded fear standard required for asylum is more generous than the clear probability standard of withholding of removal An alien seeking withholding of removal from any country must show through facts a clear probability that his life or freedom would be threatened in that country directed for removal on account of their race, religion, nationality, membership in a particular social group, or political opinion. INS vs Stevie, 467 U.S. 407 (1984). Clear probability means that the respondent's facts must establish it's more likely than not, that he'd be subjected to persecution under one of the grounds specified.

Withholding of removal, is mandatory once the aliens have established the qualification for that relief. Once granted they cannot be returned to that country, where they would face persecution but may be removed to another country under certain circumstances

Respondents have requested, also, withholding of removal under the Convention Against Torture. Their burden is proving that more likely than not, they'd be tortured if returned to their home country. For an act to constitute torture, it must satisfy each of the five elements in the definition of torture The act must cause severe physical or mental pain and suffering The act must be intentionally inflicted, and the act must be inflicted for a prescribed purpose as defined in the regulations. The act must be inflicted by or at the instigation of a public official, or with the consent or acquiescence of a public official, who has custody or physical control of the victim Finally, the

act must not arise to the imposition of lawful sanctions. The term, actively constituting torture, does not simply refer to general violence· rather, the reference activity must be the very torture that the applicant claims to fear. The existence of a consistent pattern of gross, flagrant or mass violation of human rights in a particular country does not, as such, constitute sufficient ground for determining that a particular person would be in danger of being subjectively tortured upon his return to that country.

Under the Convention Against Torture, the harm feared must be inflicted by or at the instigation or with the consent or acquiescence of a public official or person acting in an official capacity. Where the alien alleges a likelihood of torture from non-governmental sources, he must demonstrate that Government officials are willfully accepting of the non-governmental source's torturous conduct. A public official's acquiescence to torture requires that they have an awareness of the activity prior to its commencement, and a breach of legal responsibility in not intervening to prevent such activity. Consequently, the definition of torture includes only acts that occur in the context of governmental authority. It does not extend to persons the government is unable to control. To demonstrate acquiescence, he must show more than the mere fact that government officials are aware of such activities constituting torture, but are powerless to stop it. If the Immigration Court determines the alien is more likely than not to be tortured upon return to this country, this application should be granted

The respondents indicate their fear of persecution gave rise due to an event that allegedly occurred in 1998, when their furniture store was burned. The respondents indicated that they were, this was during the riots, where

a number of stores were burned and looted in their area, which is predominantly Chinese, their store, as well as others, were also burned. Respondent indicated that it was burned and looted The document submitted show that the respondent had a furniture company, not authenticated pursuant to regulations, was given little weight The same picture on some of these documents, is the same picture on documents that occurred much later, the explanation is they don't care about recent photos, when we attach it. The Court did not find that compelling. Also, the respondent's wife indicated that the business began in 1988, however the business license shows that the store business license was granted in 1990.

The respondent, both respondents claim regarding religion is at least suspect. The respondent's wife is allegedly Catholic, however, knows nothing about the term BVM, which is the blessed Virgin Mary, or the Assumption, which is a Holy Day of Obligation in the Catholic Church And also, the respondent's wife and husband were allegedly married in a Catholic church, but knows nothing about Fatima or that event. And also, it is unlikely that this sacrament would be given to someone who is married in a catholic church, to a Buddhist. The respondent was not baptized until two years later. The document submitted regarding their current status, seem to be contemporaneous to the filing of the application in 2003. The letter from the reverend is undated and does not have any, is undated. The respondents have at least, have very little, if any understanding of religious tenets of the Christian church. Neither the wife, who allegedly grew up Catholic, was married in a Catholic church, if the documents are to be *given* full weight and credit, was baptized in a Catholic church, a cathedral in Jakarta, is unable to articulate either an Old Testament book or a New Testament book She also was unable to articulate

that the birth of Christ was identified in the New Testament The respondent indicated that was the old Testament

The Court also refers to proof for evidence. There is evidence of religious conflict in Indonesia. However, according to Ponemon v. Gonzalez, 8th Circuit, 481 F 3d 108, it articulates that there are many areas within the country of Indonesia, that are Christian, where an individual could move to, contrary to the respondent's claim that there is no area in Indonesia that they would be safe

Now, the Court is mindful of the fact that Chinese in Indonesia suffer incidents of discrimination The Board addressed this in the Matter of O-Z- & I-Z-, 3346, an alien who suffered repeated beatings and received multiple handwritten anti-Semitic threats, whose apartment was vandalized by anti Semitic nationalists, whose son was subjected to degradation and intimidation on account of his Jewish nationality, established that he had suffered past harm which, in the aggregate, rises to the level of persecution as contemplated in the Immigration and Nationality Act. However, in the events in this particular case, the Court does not find they have reached, that in the aggregate, rise to the level of persecution The respondent himself, as well as respondent's wife's sister, have the benefit of a university degree and there's no indication they were limited as to their education and advancement.

The Court also notes that the pictures that were shown, don't give any, are insufficient to establish that this was a furniture store that was burned. That this was the respondent's furniture store. The Court noted that there's nothing *in* there to suggest it was a furniture store

or any other type of identifying marks Also, the pictures submitted, which the Court reviewed, they had no date when the pictures were in fact taken

The Court also notes that the respondents in fleeing persecution, if that were to be the account, the respondents did not act in such a fashion when they were asked at the airport their, which is the normal course, even though the respondent indicates that he doesn't remember, how long they plan to stay, they failed to represent that if they had made a decision to stay in the United States and if they feared persecution or suffered persecution in the past. It was only after the requirement that, of the Indonesian's Report, that they decided that they should file their asylum application.

According to the U S Citizenship and Immigration Services, experts say that although conditions for ethnic Chinese in Indonesia have improved considerably since 1998, wave of arson attacks in other major cities on businesses, causes individuals to fear they'd be targeted, but this is a result of an economic crisis It notes they are vulnerable as a tiny but prominent minority in areas *in* a volatile nation. Chinese Indonesians currently may face isolated threats and harassment

There is little appearance, however, of the sort of organized attacks that targeted that community in the mid-to-late 1990's, that noting the peaking of the anti-Chinese riots that occur just before President Suharto was ousted in May of 199B. While some official discrimination persists, the Government has lifted many of the cultural restrictions from the Suharto era and the present president is widely seen as tolerate of both racial and religious differences

The Court notes that as a result of these riots a number of cases have come before us with the Indonesian community all citing that event, which the Court does agree was a traumatic event However, the Court does not find that the respondents have established, through the documentation submitted, that they were, in fact, victims of this. Further, there is no showing that they will be precluded from filing from any, other than their testimony alone, any filing for any insurance based upon the unfortunate, if this in fact occurred, unfortunate burning down of the buildings and/or vandalism

The Court also notes that the respondent filed for an extension of his visitor's visa, both he and his wife, two times, rather than filing for asylum The Court finds that uncharacteristic for someone who is truly in fear of returning to his home country, that he would not take steps during all this period of time, to seek advice on how to properly remain, knowing that, as of 2001, at that time he took no action until 2003. So, the Court finds that curious, which also the Court finds reflect on the credibility of the claim.

Accordingly, the Court finds that the respondent has not established a clear probability of persecution upon their return to Indonesia The respondents have not established more likely than not, that the Government would seek to torture them upon return

The Court finds that the respondents are credible and in light of a concern about returning to Indonesia, however, does not find the reports that's presented regarding these claims of religion in these past incidences to be compelling and truthful. While these incidents may have occurred, the Court is not satisfied the respondents have shown that these in fact occurred to them and they

were in fact the subject of it.

The questions regarding religion, the Court is also mindful of the fact that practice of religions may differ, however, the Catholic Church is one that has set rules and set guidelines and is universally the same. The fact that they don't even know the Bible, suggests that this is not a strong claim regarding any type of religious persecution. So, and the Court finds that as believing any, all, or part of the claim

The Court finds that it's more likely that the respondents are economic refugees seeking better opportunities here in the United States The respondent himself, after two visits here, his first visit, came back to immediately find work. When questioned on that, the Court did not find that, it appears he used an agent and when confronted with that further, the respondent backed off on that

Therefore, on the whole, the Court finds that the respondent has not met his burden. Accordingly, his applications for asylum and both forms of withholding of removal are denied.

The respondent herein is granted voluntary departure, however, in lieu of an order of deportation on or before June 25, 2007, provided that within five business days, the respondent provide the Government with a bond of $2,000 apiece.

WILLIAM A. CASSIDY
Immigration Judge